

State of Kansas  
(5-1-95)

The Adjutant General's Department

GENERAL CONDITIONS OF THE CONTRACT

Kansas Army National Guard

ARTICLE INDEX	PAGE	ARTICLE INDEX	PAGE
1. Relationship of the Federal Government . . . . .	1	27. Withholding of Payments . . . . .	11
2. Contract Documents . . . . .	1	28. Acceptance of Final Payment as Release . . . . .	11
3. Owner . . . . .	1	29. Payments by Contractor . . . . .	12
4. Shop Drawings and Samples . . . . .	1	30. Bonds . . . . .	12
5. Materials and Workmanship . . . . .	2	31. Architect/Engineer's Authority . . . . .	12
6. "Or Equal" Clause . . . . .	3	32. Allowances . . . . .	12
7. Surveys, Permits and Regulations . . . . .	3	33. Assignments . . . . .	13
8. Sales Tax . . . . .	3	34. Quantities of Estimates . . . . .	13
9. Contractor's Obligations and Superintendence . . . . .	4	35. Conflicting Conditions . . . . .	13
10. Protection of Work and Property-Emergency . . . . .	4	36. Notice and Service Thereof . . . . .	13
11. Inspections and Testing of Materials . . . . .	4	37. Required Provisions Deemed Inserted . . . . .	13
12. Reports, Records and Data . . . . .	5	38. Use and Occupancy Prior to Acceptance . . . . .	13
13. Changes in the Work . . . . .	5	39. Suspension of Work . . . . .	14
14. Extras . . . . .	6	40. Safety . . . . .	14
15. Time for Completion . . . . .	6	41. Indemnification . . . . .	14
16. Time Extension . . . . .	6	42. Kansas Acts Against Discrimination . . . . .	15
17. Optional Performance and Payment Guarantee . . . . .	7	43. Antitrust . . . . .	15
18. Correction of Work . . . . .	7	44. General Guarantee . . . . .	15
19. Subsurface Conditions Found Different . . . . .	7	45. Arbitration, Damages and Warranties . . . . .	15
20. Right of Owner to Terminate Contract . . . . .	8	46. Insurance . . . . .	15
21. Separate Contracts . . . . .	8	47. Liquidated Damages . . . . .	16
22. Subcontracts . . . . .	8	48. Simultaneous Execution of Construction Contracts . . . . .	16
23. Mutual Responsibility of Contractors . . . . .	9	49. Buy American Act . . . . .	17
24. Construction Schedule and Reports . . . . .	9	50. Lobbying . . . . .	17
25. Contract Work Hours & Safety Standards Act - Overtime Compensation . . . . .	9	51. Environmental Protection . . . . .	17
26. Payments to Contractor . . . . .	10	52. Debarment and Suspension . . . . .	17
		53. Drug-Free Work Place . . . . .	18
		54. State Energy Plan . . . . .	18
		55. Use of United States Flag Vessel . . . . .	18
		56. Audit . . . . .	18

## 1. RELATIONSHIP OF THE FEDERAL GOVERNMENT

This contract is funded in part by the Federal Government. The Federal Government is not a party to this contract. As a condition of receiving and expending Federal funds, there are certain rights of Federal inspection, Federal approval of contract changes and modifications and Federal approval of settlements or dispute actions that the Federal Government will exercise prior to authorization of Federal funds. Therefore, no inspection or acceptance, change, modification, settlement, dispute claim payment or dispute action will be considered binding until the required Federal approval is obtained. The Chief, National Guard Bureau, or his designated representative, is the approval authority. This paragraph does not nullify any rights conferred on the Federal Government by law or other clause required due to the use of Federal funding.

## 2. CONTRACT DOCUMENTS

A. Contract Documents consist of the Notice to Bidders, Instruction to Bidders, Bid Form, Contractor's Performance Bond, Contractor's Public Works Bond to the State, the Contract, General Conditions, Supplemental General Conditions, Specifications, Drawings, maps, plats, etc., prepared or furnished by the Architect/Engineer, and Addenda, including additions and/or modifications therein incorporated before the execution of the Contract. Contract Documents shall also include Change Orders and written interpretations by the Architect/Engineer which are made after execution of the Contract.

B. The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

C. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The intention of the documents is to include all labor, materials and equipment necessary for the proper execution of the work.

## 3. OWNER

The owner is the Adjutant General's Department, Kansas Army National Guard, a

State Agency representing the State of Kansas with whom the contract is executed.

## 4. SHOP DRAWINGS AND SAMPLES

A. Shop drawings shall consist of drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared by the Contractor or any Subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work.

- 1) All shop drawing submittals shall be accompanied by a transmittal letter identifying the Project and listing each item being submitted. Each item submitted shall be identified by reference to the project identification number, specification number and/or drawing sheet numbers.
- 2) The Contractor shall make all shop drawing submittals to the Architect/Engineer. Any submittals made directly to the Architect/Engineer from Subcontractors or suppliers will be returned without review by the Architect/Engineer. The Contractor shall submit to the Architect/Engineer for approval five (5) copies of shop drawings consisting of drawings, diagrams, illustrations, schedules, etc., which are prepared by the Contractor or his Subcontractors. The Contractor shall make any corrections required by the Architect/Engineer and shall resubmit five (5) copies.

B. Samples shall consist of physical examples furnished by the Contractor in sufficient size and quantity to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged. Samples shall be submitted on items called for in the Specifications or as requested by the Architect/Engineer.

- 1) Submit samples in sufficient quantity to permit Architect/Engineer to make all necessary tests and of adequate size to show quality, type, color range, finish, and texture. Label each sample stating materials, type color, thickness, size, Project name, identification number, and Contractor's name.

- 2) Submit transmittal letter requesting approval, and pre-pay transportation charges to Architect/Engineer's office on samples forwarded.
- 3) Materials installed shall match approved samples.

C. The Contractor shall review shop drawings and samples and shall place his stamp thereon as evidence that he has checked each item, and shall submit same with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the Work of any other Contractor. The Contractor shall inform the Architect/Engineer in writing of any deviation in the shop drawings or samples from the requirements of the Contract Documents.

D. By stamping and submitting shop drawings and samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers, and similar data, and that he has checked and coordinated each shop drawing and sample with the requirements of the Work and of the Contract Documents. Drawings not so noted will be returned without being examined by the Architect/Engineer.

E. The Architect/Engineer will review and approve shop drawings and samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. The Architect/Engineer's approval of a separate item shall not indicate approval of an assembly in which the item functions, nor shall the Architect/Engineer's approval relieve the Contractor from responsibility for errors or omissions in shop drawings or samples.

F. The Contractor shall make any corrections required by the Architect/Engineer and shall resubmit the required number of corrected copies of shop drawings or new samples until approved. Resubmittal items shall be identified as such on the items and the transmittal letter.

G. The Contractor shall direct specific attention in writing on resubmitted shop drawings to revisions other than the corrections requested by the Architect/Engineer on previous submissions. Corrections or changes indicated on shop

drawings shall not be considered an extra Work order.

H. No Work requiring a shop drawing or sample submission shall be commenced until the submission has been approved by the Architect/Engineer. All such Work shall be in accordance with approved shop drawings and samples.

I. The Contractor shall keep on the site of the Work, an approved or confirmed copy of the shop drawings and Specifications, and shall at all times give the Owner access thereto.

J. All drawings for any one Contract should be numbered consecutively and shall bear the name, project identification number, and location of the Project, the name of the Contractor, the date of the drawing, and the date of each correction or revision.

## 5. MATERIALS AND WORKMANSHIP

A. The Contractor shall perform all Work and furnish all supplies and materials, machinery, equipment, facilities and means necessary to complete all the Work required by this Contract, within the time specified, in accordance with the provisions of the Contract Documents.

B. Unless otherwise specified, all equipment, materials, and articles incorporated in the Work covered by this Contract shall be new, and both workmanship and materials shall be of the best grade of their respective kinds. The Contractor shall, if required, furnish satisfactory evidence as to kind and quality of materials. The Contractor shall furnish to the Architect/Engineer for his approval, the name of the manufacturer of machinery, mechanical and other equipment, which he contemplates installing, together with their performances capacities and other pertinent information.

C. If not otherwise provided, materials or work called for in this Contract shall be furnished and performed in accordance with best established practice and standards recognized by Architects, Engineers and the Trade.

D. In order that ready availability of materials, parts, or components for repair, replacement, or expansion may be assured, all such materials, parts and components shall be obtained where feasible from sources which maintain a regular, domestic stock.

E. Reference to "Standard" specifications of any association or manufacturer, or codes of State authorities, refers to the most recent

printed edition or catalog in effect on the date which corresponds with date of the Contract Documents.

F. Whenever reference is made in the Specification that work shall be "performed", "applied", "installed", "finished", "tested", or "connected", in accordance with the "manufacturer's directions or instruction", the Contractor to whom those instructions are directed shall furnish printed copies of such instructions when requested by the Architect/Engineer before execution of the Work.

#### 6. "OR EQUAL" CLAUSE

A. Whenever a material, article or piece of equipment is identified on the Drawings or in the Specifications by reference to manufacturers' or vendors' name, trade name, catalog number, etc., it is intended merely to establish a standard. Materials or equipment items of other manufacturers may be used only upon the following conditions.

- 1) That, in the opinion of the Architect/Engineer, the proposed material or equipment item is fully equal (in design, materials, construction, workmanship, performance, finish, physical size, etc.) to the named item. No compromise to lower quality level, however small, is acceptable.
- 2) That in substituting materials or equipment, Contractor assumes responsibility for any changes in system or for modifications required in adjacent or related work to accommodate such substitution, despite the Architect/Engineer approval and all costs growing out of the approval of "or equal" items shall be the responsibility of the Contractor. None of the extra costs resulting from such approval shall be the responsibility of the Owner, the Architect/Engineer or other Contractors.
- 3) It shall be understood that the use of materials or equipment other than those specified, or approved equal by the Architect/Engineer, shall constitute a violation of contract, and that the Architect/Engineer

shall have the right to require the removal of such materials or equipment and their replacement with the specified materials or equipment at the Contractor's expense.

C. No request for approval of "or equal" materials will be entertained except from the Contractor under whose jurisdiction the Work in question is to be provided.

#### 7. SURVEYS, PERMITS AND REGULATIONS

A. The Owner will furnish to the Contractor all site, topography and property surveys necessary for the execution of the Work.

B. The Contractor shall procure all permits, licenses and approval necessary for the execution of his Contract.

C. The Contractor shall give all notices and comply with all State laws, codes, rules and regulations relating to the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences or other protective facilities.

D. The Contractor shall promptly notify the Architect/Engineer of any variances of the Drawings or Specifications with that of any State law, code, rule or regulation. Upon such notification, the Architect/Engineer will require correction of said variances to comply with applicable law, code, rule or regulation at no additional cost to the Contractor.

E. If charges for water, sewer and other utility connections made by municipalities are costs which the State is obligated to pay, the Contractor shall pay these charges where required by the Specifications.

#### 8. SALES TAX

The Contractor shall be subject to the provisions of the Kansas Retailers Sales Tax Act for all supplies, materials and labor. All new construction labor is exempt.

**9. CONTRACTOR'S OBLIGATIONS AND SUPERINTENDENCE**

- A. The Contractor shall provide and pay for all materials, labor, tools, equipment, transportation, and superintendence, necessary to execute, complete, and deliver the Work within the specified time.
- B. Any Work necessary to be performed after regular working hours, or on Sundays or Legal Holidays, shall be performed without additional expense to the Owner.
- C. The Contractor shall furnish, erect, maintain, and remove such temporary facilities as may be required.
- D. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the Contract Documents, and shall complete the entire Work to the extent of quality and workmanship implied by the Contract Documents and in a manner which will warrant acceptance by the Architect/Engineer, the Owner.
- E. At the site of the Work, the Contractor shall give his personal superintendence to the Work or shall employ a construction superintendent or foreman, experienced in Work of character covered by contract, who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Architect/Engineer and Owner and shall be one who can be continued in that capacity for the particular job involved unless he ceases to be on the Contractor's payroll. The superintendent or foreman shall coordinate and enforce requirements of the Contract whether the particular item of work be under his direct supervision or under subcontract. He shall insure that work is executed by experienced personnel.
- F. Contractors and Subcontractors employed upon Work shall be required to conform to Labor and Employment Laws of the State of Kansas and various acts amendatory and supplementary thereto and to other laws, ordinances and legal requirements applicable thereto.
- G. The presence and observation of the Work by the Architect/Engineer and the Construction Representative shall not relieve the Contractor of any of his obligations.
- H. The Contractor shall be responsible for the conduct of contractor's employees and the employees of subcontractors and suppliers on the work site. The Contractor shall take immediate steps to remedy any

activity which may be construed as discriminatory or which creates a hostile work environment. Activities covered by this provision include, but shall not be limited to, signs or language that are vulgar, profane or racially or sexually derogatory.

**10. PROTECTION OF WORK AND PROPERTY-EMERGENCY**

- A. The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with his Contract. He shall at all times safely guard and protect his own Work, and that of adjacent property, from damage. The Contractor shall replace or make good any such damage, loss or injury unless such be caused directly by errors contained in the Contract, or by the Owner, or his duly authorized representative.
- B. In the event of temporary suspension of Work, or during inclement weather, or whenever the Architect/Engineer shall direct, the Contractor shall, and shall cause his Subcontractors to carefully protect his and their Work and materials against damage or injury from the weather. If, in the opinion of the Architect/Engineer, any work or materials that have been damaged or injured by reason of failure on the part of the Contractor or any of his Subcontractors so to protect his Work, such materials shall be removed and replaced at the expense of the Contractor.
- C. In case of an emergency which threatens loss or injury of property, or safety of life, the Contractor will be allowed to act, without previous instructions from the Architect/Engineer, in a diligent manner. He shall notify the Architect/Engineer promptly thereafter. Any claim for compensation by the Contractor due to such extra Work shall be promptly submitted to the Architect/Engineer for approval as provided for in Article 13, herein.

**11. INSPECTION AND TESTING OF MATERIALS**

- A. The authorized representatives of the Owner shall be permitted to inspect all Work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.
- B. They shall at all times have access to the Work wherever it is in preparation or progress and the Contractor shall provide facilities for such access and for inspection.
- C. Should it be considered necessary or advisable at any time before final acceptance

of the entire Work to make any examination of Work already completed, by removing or tearing out same, the Contractor shall, upon request of the Architect/Engineer promptly furnish all necessary facilities, labor and materials. If such Work is found to be defective in any aspect, due to fault of the Contractor or his Subcontractors, he shall assume all expenses of such examination and of satisfactory reconstruction. If however, such Work is found to meet the requirements of the Contract, the Contractor will be reimbursed for such examination and replacement in accordance with Article 13 of these General Conditions.

D. If the Contract Documents require any Work to be specially tested or approved, the Contractor shall give the Architect/Engineer and Construction Representative timely notice of its readiness for testing or inspection. Such materials and equipment requiring testing, shall be tested in accordance with accepted or specified standards, as applicable. Unless otherwise called for in the specifications, the laboratory or inspection agency shall be recommended by the Architect/Engineer and the Contractor will pay all costs incurred by the specified testing and laboratory procedures. Should retesting be required, due to failure of initial testing, the cost of such retesting shall be borne by the Contractor.

E. The cost of any testing performed by manufacturers or Contractors for the purpose of substantiating acceptability of proposed substitution of materials and equipment, or the necessary conformance testing in conjunction with manufacturing processes or factory assemblage, shall be borne by the Contractor or manufacturer responsible.

## 12. REPORTS, RECORDS AND DATA

The Contractor shall promptly submit to the Architect/Engineer such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Architect/Engineer may request concerning Work performed or to be performed under this Contract. See Article 24.

## 13. CHANGES IN THE WORK

A. Except in cases of emergency, or as directed by the Architect/Engineer, no changes in the Work covered by the Contract Documents shall be made without having such change executed in writing by Contract

Change Order and approved by the Architect/Engineer and Owner. Any change in the Work performed by the Contractor without signed approval or direction by the Architect/Engineer shall be done at the Contractor's expense.

B. Changes in the Work covered by Contract Change Order include, but are not limited to: extension or reduction in project completion time, charges or credits resulting from changes in construction. Charges or credits to the Contract sum for Work covered by the approved Change Order shall be determined by one or more, or a combination of the following methods:

- 1) Unit or lump sum prices previously stipulated and approved in the Contractor's original bid proposal.
- 2) An agreed to lump sum proposal with an itemized breakdown on major items of labor and materials including:
  - a) Material quantities and unit costs.
  - b) Labor breakdown by trade and unit costs.
  - c) Construction equipment.
  - d) Workmen's Compensation and liability insurance.
  - e) Employment taxes under FICA and FUTA.
- 3) Cost-Plus Work, with a not-to-exceed maximum dollar limit, based upon the actual cost of the Work performed including those items in (2) a, b, c, d, and e above.

No overhead, profit or fee shall be included in the breakdown of costs in either (2) or (3) above. To the total of those costs, the Contractor may add a negotiated amount for overhead, profit or fee, not exceeding the maximum amounts shown below, which shall be considered to include, but not limited to the costs of insurance (other than liability), bond, job-site staff and office expense, small tools and incidental job burdens:

To Contractor on Work performed by other than his own forces:

Over-Head	Profit	Fee
0%	0%	10%

To first level Subcontractor on Work performed by his Subcontractors:

Over-Head	Profit	Fee
0%	0%	10%

To Contractor and/or his Subcontractors for that portion of Work performed with their respective forces:

Over-Head	Profit	Fee
10%	10%	0%

On proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit percentages shall be on the net increase in direct costs for the Contractor or Subcontractor performing the Work.

C. The Contractor shall submit with his proposal his request for time extension or reduction (if any) and shall include sufficient information and dates to substantiate such claim.

D. If the Contractor claims that by any instructions given him by the Architect/Engineer, by drawings or otherwise, he is required to perform extra Work or furnish extra material not part of the Contract, and it involves extra cost, he shall give the Architect/Engineer written notice thereof within two weeks after the receipt of such instructions and in any event before proceeding to execute the Work, unless delay in executing Work would endanger life or property.

#### 14. EXTRAS

Without invalidating the Contract, the owner may order extra Work or make changes by altering, adding to or deducting from the Work, the Contract sum being adjusted in accordance with Article 13, herein.

#### 15. TIME FOR COMPLETION

A. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work in this Contract shall be

commenced on a date to be specified in the "Notice to Proceed". Unless otherwise provided in the Contract, the time for completion is measured by calendar days, not work days.

B. The Contractor agrees that said Work shall be prosecuted regularly and diligently at such rate of progress to insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the Completion of the Work, described in the Contract is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industry conditions prevailing in this locality.

#### 16. TIME EXTENSIONS

A. It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any Work, the new time limit fixed by such extension shall be of the essence of this Contract. Time extensions may be granted if the delay is due:

- 1) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes. The listing below defines the monthly anticipated adverse weather for the contract period and is based upon National Oceanic and Atmospheric Administration (NOAA) or similar data for the geographic location of the project.

JAN (11)	FEB (6)	MAR (4)	APR (5)	MAY (7)	JUN (7)
JUL (6)	AUG (5)	SEP (5)	OCT (4)	NOV (3)	DEC (6)

The above schedule of anticipated adverse weather will

constitute the base line for monthly (or portion thereof) weather time throughout the contract on a monthly basis, actual adverse weather days will be recorded on a calendar day basis (include weekends and holidays) and compared to the monthly anticipated adverse weather in paragraph above. The term actual weather days shall include days impacted by actual adverse weather.

- 2) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsection 1) of this article.

B. The Contractor shall, within ten (10) days from the beginning of such delay, unless the Architect/Engineer shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of his decision in the matter.

C. Permitting the Work or any part of it to continue after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of his rights under the Contract.

#### 17. OPTIONAL PERFORMANCE AND PAYMENT GUARANTEE

A. The Contractor may elect to use a Certificate of Deposit as a Performance and Payment Guarantee in lieu of providing a Performance Bond and Public Works bond. The Certificate of Deposit shall have a value of not less than the amount of the Contract, and shall serve the purpose of the Performance and Public Works Bonds as defined in Article 29 of the General Conditions of the Contract.

B. The Director of Purchases may accept a Certificate of Deposit payable to the State of Kansas, without condition, in lieu of any required surety bond from a Bidder or Contractor in the case of any Contract for construction, repairs or improvements under K.S.A. 75-3739, 75-3741 or 60-1111 and Amendments thereto.

C. The Certificate of Deposit shall be subject to forfeiture to the State of Kansas and shall be in a form and under such

conditions as may be prescribed by the Director, Division of Purchases for surety bonds in accordance with K.S.A. 60-1112 and amendments thereto.

D. Each such Certificate of Deposit shall be retained by the State for at least six (6) months after the final acceptance of the Work for which the Contract was entered into. At the end of such time period, the Certificate of Deposit may be endorsed back to the Contractor if there are no claims by the State under the Contract or by any person making a claim against the Certificate of Deposit.

E. All interest accruing under any such Certificate of Deposit shall belong to the Contractor unless the Certificate of Deposit is forfeited to the State of Kansas.

#### 18. CORRECTION OF WORK

A. All work, all materials whether incorporated in the Work or not, and all processes of manufacture and places of manufacture shall be at all times subject to the inspection of the Architect/Engineer who shall be the final judge of the quality and suitability of the Work, materials, and processes of manufacture for the purposes for which they are used. Should they fail to meet his approval, they shall be forthwith reconstructed, made good, replaced or corrected, as the case may be, by the Contractor at his own expense. Rejected material shall be removed from the site as soon as replacement can be affected without substantial delay to the Project.

B. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after ten (10) days' written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including the cost of the Architect/Engineer's additional services made necessary by such default, neglect or failure. Such Change Order shall not require the approval of the Contractor.

#### 19. SUBSURFACE CONDITIONS FOUND DIFFERENT

Should the Contractor encounter subsurface or latent conditions at the site materially differing from those indicated in the Contract



Documents, he shall immediately give notice to the Architect/Engineer and Owner of such conditions before they are disturbed. The Architect/Engineer will thereupon promptly investigate the conditions, and if he finds that they materially differ from those indicated in the Contract Documents, he will at once make such changes as he may find necessary, any increase or decrease of cost resulting from such changes to be adjusted in the manner provided in Article 13 of the General Conditions.

## **20. RIGHT OF OWNER TO TERMINATE CONTRACT**

A. In the event that any of the provisions of this Contract are violated by the Contractor, or by any of his Subcontractors, the Director of Purchasing, on behalf of the Secretary of Administration, may serve written notice upon the Contractor and the Surety of their intention to terminate the Contract, such notice to contain the reasons for such intention, and unless within ten (10) days after the serving of such notice upon the Contractor, such violation or delay shall cease and satisfactory arrangement or correction be made the Contract shall upon expiration of said ten (10) days, cease and terminate.

B. In the event of any such termination, the Director shall immediately serve notice thereof upon the Surety and the Contractor, and the Surety shall have the right to take over and perform the Contract, provided, however, that if the Surety does not commence performance thereof within then (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and prosecute the same to completion by Contract at the expense of the Contractor, and the Contractor and his Surety shall be liable to the Owner for any excess cost above the original Contract amount occasioned the Owner thereby. In such event, the Owner may take possession of and utilize in completing the Work, such materials, appliances and plant as may be on the site of the Work and necessary therefor.

C. The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

## **21. SEPARATE CONTRACTS**

A. When separate contracts are awarded for different portions of the Project or other Work at the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Contract with the Owner. The term Prime Contractor shall mean that specific Contractor established by the Contract to serve as coordinator and director of all Work, and all Contractors placed under the contractual authority of the Prime Contractor shall provide Work for the Project in accordance with the direction of the Prime Contractor. Failure to abide by this provision shall constitute a breach of Contract.

B. The Owner reserves the right to perform Work related to the Project with his own forces, and to award separate contracts in connection with other portions of the project or other Work on the site under these or similar conditions of the Contract. All Contractors shall fully cooperate with each other and carefully fit the Work to that provided under other contracts as may be directed by the Owner. No Contractor shall commit or permit any act which will interfere with the performance of Work by any other Contractor.

## **22. SUBCONTRACTS**

A. The Contractor may utilize the services of specialty Subcontractors on those parts of the Work, under normal contracting practices, as performed by such Subcontractors.

B. Unless otherwise required by these Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Architect/Engineer in writing the names of the persons or entities proposed for each of the principal subcontracted portions of the Work. The Contractor shall not award any Work to any Subcontractor found unqualified by the Architect/Engineer or the Owner.

C. The Contractor shall be as fully responsible to the Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

D. Nothing contained in Contract Documents shall create any contractual relation between any Subcontractor and the Owner.

E. The Contractor, by written agreement, shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the Terms of these Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and the Architect/Engineer. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors.

### 23. MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect on the part of the Contractor, any other Contractor or any Subcontractor shall suffer loss or damage on the Work, the Contractor agrees to promptly settle with such other Contractor or Subcontractor by agreement or otherwise to resolve the dispute. If such other Contractor or Subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and hold harmless the Owner against any such claim.

### 24. CONSTRUCTION SCHEDULE AND REPORTS

A. Immediately after execution and delivery of the Contract and before the first partial payment is made, the Contractor (or the designated Prime Contractor) shall meet with the other Contractors and/or Subcontractors and have each establish an estimated construction progress schedule. The Contractor (or designated Prime Contractor) shall then coordinate each Contractor's or Subcontractor's schedule and establish a mutually acceptable schedule for the entire progress of the Work and shall deliver the schedule to the Architect/Engineer in a form satisfactory to the Owner.

B. The construction progress schedule shall include as a minimum the following detail:

- 1) Submission dates of all detail and shop drawings.
- 2) Procurement and delivery dates for all equipment and material.
- 3) Weekly definition of extent of Work and activity for each trade

under each Contract or Subcontract.

- 4) Intended time for starting and completing each activity including indication of float time.

C. The progress schedule shall be maintained current at all times by the Contractor (or the designated Prime Contractor). Revisions shall be made in the same detail as the original and shall be accompanied by written explanation of the reasons for the revision and shall be subject to the approval of the Architect/Engineer.

D. Should the Contractor fail to meet completion dates required by the progress schedule, the Owner's Representative may issue a written notice to the Contractor requiring the Contractor to submit a written plan for expediting the Work to comply with the progress schedule. The plan shall be submitted to the Owner's Representative within seven (7) days after the Contractor's receipt of such notice. The Contractor's plan shall specify the dates and means by which the Contractor will bring the Work back on schedule. Means may include, but are not limited to, hiring additional workers, working additional hours, utilizing additional equipment, or expediting delivery of materials. If the Contractor fails to submit a written plan or fails to comply with dates specified in the plan for bringing the Work back on schedule, the Owner's Representative may, by written notice, require that additional workers, plant and equipment be placed on the Work or require that hours, in addition to regular hours, be worked until progress is as scheduled, with no additional cost to the Owner. The Contractor shall immediately implement requirements of the notice.

### 25. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (FAR 52.222-4)

A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) in any work week in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all

manhours worked in excess of 40 hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

C. Withholding for unpaid wages and liquidated damages. The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

D. Payrolls and basic records. (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be

maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act. (2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

E. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

## 26. PAYMENTS TO CONTRACTOR

A. The Owner will make partial payments to the Contractor for the value, proportionate to the amount of the Contract, of all labor and material incorporated in the Work during the preceding calendar month upon receipt of certification from the Architect/Engineer and approval of the Owner.

B. The Contractor (or designated Prime Contractor) shall submit monthly to the Architect/Engineer progress reports showing actual percentage of each activity completed, estimated future progress and anticipated completion time of such activity with their payment request.

C. The Contractor shall submit to the Architect/Engineer or Owner as applicable, a request for certification for each payment, on current AIA documents G702 and G703. Contractors shall be responsible for securing their own AIA forms. This request for certification shall be submitted in the number of copies directed, and shall include the Contractor's detailed estimate of all items and activities of Work to be performed, in the space provided on the form. If requested, the statement will be supported by such evidence as may be required, showing the Contractor's right to the payment claimed.

D. Request for payment for preparatory Work and materials delivered and suitably stored at the site to be incorporated into the Work at some future period, will be given due consideration. The Architect/Engineer may,

under certain circumstances, approve payment up to 90% of the value of manufactured products delivered to a suitable warehouse at or near the locale of the Project. Stored products shall be insured to 100% of their value. Proof of said insurance shall be given to the Owner. A bill of sale, including an itemized inventory of all stored products, shall be obtained and provided the Owner. Approval of the surety company of the contractor shall also be obtained and provided to the Owner before these items are stored. Insurance for stored materials shall include transportation from the warehouse to the job site.

E. Payments by the Owner will be due within 30 days after receipt of certified request for payment from the Architect/Engineer or Contractor as applicable.

F. Ten percent of the certified amount of each payment request will be retained until final completion and acceptance of all Work covered by the Contract. However, any time after 50 percent of the Work has been physically completed, the remaining certified payment amounts may be made in full if the Architect/Engineer finds that the progress of the Work corresponds with the Contractor's construction progress schedule and the installed Work is in conformance with the intent of the Contract Documents. The retained amount will remain at the constant level which was withheld at the time of 50% completion. The Owner reserves the right to reinstate the retainage on future payment requests if progress falls behind the construction progress schedule or Work is not in conformance with the intent of the Contract Documents.

G. All material and Work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

H. Upon Substantial Completion of the Contract, retainage may be reduced to five percent of the Contract amount or to an amount deemed sufficient by the Architect/Engineer to protect the Owner's rights and interest for any remaining Work to

be completed or unresolved issues or disputes. Final payment will be made thirty days after final acceptance of the Work and receipt certified payment.

I. The Contractor shall submit a certification that all debts and claims against this Project have either been paid in full or otherwise satisfied.

## 27. WITHHOLDING OF PAYMENTS

A. The Owner may, after having served written notice on the Contractor, either pay directly any unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged. Whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event, shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his Surety.

B. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payments so made by the Owner, shall be considered as a payment made under the Contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payment made in good faith.

C. The Contractor agrees that he will indemnify and hold the Owner harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, material suppliers, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract.

## 28. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

A. The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- 1) unsettled liens
- 2) faulty or defective Work appearing after substantial completion
- 3) failure of the Work to comply with the requirements of the Contract Documents, or
- 4) terms of any special guarantees or warranties required by the Contract Documents.

B. The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and still unsettled.

#### 29. PAYMENTS BY CONTRACTOR

The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of each Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of each Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

#### 30. BONDS

A. A performance Bond shall be furnished to the Division of Purchasing by the Contractor in an amount equal to One Hundred Percent (100%) of the Contract price as security for the faithful performance of this Contract and as security for the payment of all persons performing labor and furnishing materials in connection with this Contract.

B. A Public Works Bond as required by K.S.A. 60-1111 shall also be furnished by the Contractor in the amount of One Hundred Percent (100%) of the Contract price and shall be filed with the Clerk of the District Court in the county where the Project is being constructed. A Public Works Bond may not be required for Projects with a Contract price below \$10,000.

C. Bonds shall be issued by a Surety company licensed to do business in the State of Kansas.

#### 31. ARCHITECT/ENGINEER'S AUTHORITY

A. The Architect/Engineer is retained by and is responsible to the Owner and Secretary of Administration.

B. The Architect/Engineer shall determine the amount, quality, acceptability and fitness of the several kinds of Work and materials which are provided under this Contract and shall decide all questions which may arise in relation to said Work and the construction thereof. In case any question shall arise between the parties hereto relative to said Contract or Specifications, the determination or decision of the Architect/Engineer shall be a condition precedent to the right of the

Contractor to receive any money or payment for Work under this Contract affected in any manner or to any extent by such question.

C. The Architect/Engineer shall decide the meaning and intent of any portion of the Contract Documents where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their Work which may arise between the Contractor under this Contract and other Contractors performing Work on this Project for the Owner shall be adjusted and determined by the Architect/Engineer.

D. He shall provide responsible observation of construction. He has authority to stop the Work whenever such stoppage may be necessary to insure proper execution of the Contract.

E. The Architect/Engineer is the interpreter of the conditions of the Contract and the judge of its performance; as such, he shall side neither with the Owner nor with the Contractor, but shall use his powers under the Contract to enforce its faithful performance by both.

F. He shall, within a reasonable time, act on submittals and make decisions on all matters relating to the progress of the Work or the interpretation of the Contract Documents.

#### 32. ALLOWANCES

A. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Owner may direct, but the Contractor will not be required to employ persons against whom he makes a reasonable objection.

B. Unless otherwise provided in the Contract Documents:

- 1) these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance delivered at the site, and all applicable taxes;
- 2) the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;

- 3) whenever the cost is more than or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

### 33. ASSIGNMENTS

A. The Contractor shall not assign the whole or any part of this Contract or any moneys due or to become due hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

B. Such assignment shall not be made without the consent of the Surety unless the Surety has waived its right to notice of assignment.

### 34. QUANTITIES OF ESTIMATES

Wherever the estimated quantities of Work to be done and materials to be furnished under this Contract are shown in any of the documents including the proposal, they are given for use in comparing bids and the right is especially reserved to increase or diminish them as they may be deemed reasonably necessary or desirable to complete the Work contemplated by this Contract, and such increase or diminution shall in no way vitiate this Contract, nor shall any such increase or diminution give cause for claims or liability for damages.

### 35. CONFLICTING CONDITIONS

A. Any specific provision in any of the Contract Documents which may be in conflict or Inconsistent with any of the Articles in these General Conditions or the Supplementary General Conditions shall be controlling for the specific Project.

B. In case of ambiguity or conflict between the Drawings and Specifications, the Specifications shall govern.

C. Where Work or materials are specified, or shown on Drawings, to be performed, furnished or provided by more than one Contractor, each such Contractor will be deemed to have figured the item and the Architect will determine who shall furnish the Work and who shall submit the credit to the Owner.

D. Figured dimensions shall be followed in preference to measurements by scale. Large scale drawings take precedence over small scale drawings. Dimensions on drawings and details are subject to field measurements of adjacent Work.

### 36. NOTICE AND SERVICE THEREOF

Any notice to any Contractor other than normal written directives or interpretations on behalf of the Owner relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed, when said notice mailed to the said Contractor at his last given address, or delivered in person to the said Contractor, or his authorized representative at the Work.

### 37. REQUIRED PROVISIONS DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

### 38. USE AND OCCUPANCY PRIOR TO FINAL ACCEPTANCE

The Contractor agrees to allow the use and occupancy of a portion or unit of the project by the Owner provided:

A. The Owner secures written beneficial occupancy consent from the Contractor and the Architect/Engineer.

B. Secures endorsement from the insurance carrier and consent of the Surety permitting occupancy of the building or use of the Project during the remaining period of construction.

C. Assumes all costs for maintenance of heat, electricity and water, and provides custodial care and maintenance of the occupied portions.

D. Accepts all Work completed and approved within that portion or unit of the Project to be occupied, at time of occupancy.

### 39. SUSPENSION OF WORK

Should the Owner be prevented or enjoined from proceeding with the Work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of work will be extended to such reasonable time as the Owner may determine will compensate for time lost by such delay; such determination to be set forth in writing. The Contractor will not be required to hold his bid price for longer than three months. The Owner may either negotiate a change order with the Contractor for any additional costs, or terminate the contract following the three-month period. Should the Contract be terminated, the Contractor will be compensated for all Work performed to date on the Contract.

### 40. SAFETY

A. Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes shall be observed. Machinery, equipment and hazards shall be guarded, and all hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America; Safety and Health Regulations for Construction, published by Bureau of Labor Standards, U.S. Department of Labor, and Occupational Safety and Health Standards, published by Occupational Safety and Health Administration, U.S. Department of Labor, or their successor publications.

B. It shall not be the responsibility of the Owner or Architect/Engineer to enforce or direct safety rules or procedure.

C. All Contractors/Suppliers hereby agree to comply with all applicable occupational safety, health and environmental laws, regulations, standards, codes and/or ordinances at all times from inception through completion of this Contract. This includes, but is not limited to, the Hazard Communication Standard under the Occupational Safety and Health Act (for

information and free assistance, contact the Kansas Department of Human Resources, Division of Industrial Safety and Health, 312 S.W. 6th Street, Topeka, Kansas 66603-3150, phone number 913-296-4386), and the Emergency Planning and Community Right-to-Know Act (for information and free assistance, contact the Kansas Department of Health and Environment Right-to-Know Program, 109 S.W. 9th Street, Suite 501, Topeka, Kansas 66612-1290, phone number 913-296-1690.)

### 41. INDEMNIFICATION

A. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense 1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and 2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

B. In any and all claims against the Owner or the Architect/Engineer or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

C. The obligations of the Contractor shall not extend to the liability of the Architect/Engineer, his agents or employees, arising out of 1) the preparation or approval of maps, drawings, opinions, reports,

surveys, change orders, designs or specifications, or 2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

#### 42. KANSAS ACTS AGAINST DISCRIMINATION

The Contractor hereby agrees and covenants as a condition of the Contract that he will comply with the Kansas Act Against Discrimination, (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the Americans With Disabilities Act (42 U.S.C. 12101 et seq.), and that his failure to do so may be deemed to be a breach of contract and may subject the contract to be terminated.

#### 43. ANTITRUST

For good cause, and as consideration for executing this Contract, the Contractor, acting herein by and through its authorized agent, hereby conveys, sells, assigns and transfers to the State of Kansas all right, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of Kansas pursuant to this Contract.

#### 44. GENERAL GUARANTEE

A. Neither the final certificate for payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any expressed warranties or responsibility for faulty materials or workmanship.

B. The Contractor shall remedy and make good all defective workmanship and materials and pay for any damage to other Work resulting therefrom, which appear within a period of one year from the date of Substantial Completion, providing such defects are not clearly due to abuse or misuse by Owner. The Owner will give notice of observed defects with reasonable promptness.

C. Guarantee on Work executed after certified date of Substantial Completion will begin on the date when such Work is inspected and approved by the Architect/Engineer.

D. Where guarantees or warranties are required in sections of specifications for periods in excess of one year, such longer terms shall apply.

E. Within one year after official acceptance the Owner may conduct a full inspection of the completed Project and shall promptly notify the Contractor of any claims for repair or correction resulting therefrom.

#### 45. ARBITRATION, DAMAGES AND WARRANTIES

Notwithstanding any language to the contrary, no interpretation of this Contract shall be allowed to find the State or any agency thereof has agreed to binding arbitration, the payment of damages or penalties upon the occurrence of a contingency, or to permit disclaimer of any or all warranties.

#### 46. INSURANCE

A. The Contractor shall not commence Work under this Contract until the Contractor has obtained all the insurance required under this Article and such insurance has been approved by the Owner under the terms of this agreement. The Contractor shall not allow any Subcontractor to commence Work on the Subcontract until the insurance required of the Subcontractor has been so obtained and approved.

B. The Contractor shall procure and maintain at its expense, from the date of the Contractor's receipt of a Notice to Proceed until acceptance of the entire Work by the Owner, the following insurance:

- 1) Worker's Compensation Insurance for the Contractor, all partners and employees working on the Project. The Contractor shall require all Subcontractors to provide Workmen's Compensation for themselves, their partners and employees to be engaged in such Work unless the Subcontractor's employees are covered by the Contractor's workers' compensation coverage. The Contractor and all Subcontractors shall include Employers Liability coverage with a \$100,000 limit for each accident; disease-policy limit; and disease-each employee limit.



- 2) Commercial General Liability Insurance, in an amount not less than Five Hundred Thousand Dollars (\$500,000) each occurrence for bodily injury and property damage, a general aggregate of one million dollars and a products-completed operations aggregate of one million dollars. Commercial General Liability shall include the following coverages: operations; broad form property damage; completed operations; independent contractors and contractual.

- 3) Automobile Liability Insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) for bodily injury and for property damage combined. Said coverage shall cover all owned, non-owned or hired vehicles of the Contractor.

C. Scope of insurance and special hazards: The insurance provided under paragraph B above shall provide protection for the Contractor and his Subcontractors against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by anyone directly or indirectly employed by him, and also against any of the following special hazards which may be encountered in the performance of Work under this Contract such as but not limited to: blasting, explosion, collapse, underground, rigging and hoisting, railroad protective elevators and hoists.

D. Builder's Risk/Installation Floater/None: Depending on the scope of project, new construction and additions to buildings require builder's risk, renovations require installation floater. Owner and Division of Architectural Services will determine if neither is required.

- E. 1) The principal Contractor's property coverage shall name the Owner and all Contractors and/or subcontractors performing Work on the project as additional insureds.
- 2) The principal Contractor's general liability coverage (excluding professional liability) shall name the Owner and Architects/Engineers on the project as additional insureds.

F. Subcontractors' Insurance: The Contractor shall either (1) require each of his Subcontractors to procure and maintain during the life of his Subcontract Commercial General Liability Insurance, and Automobile Liability Insurance of the type and in the same amount specified in the preceding paragraphs; or (2) insure the activities of his Subcontractors in his own policies.

G. Proof of Insurance: The Contractor shall furnish the Owner with certificates showing the types, amounts, special coverages, effective dates and dates of expiration of policies. Such certificates shall provide the insurance company endeavor to give 30 days notice of policy cancellation to the certificate holder.

#### 47. LIQUIDATED DAMAGES

A. The Owner shall be entitled to liquidated damages to cover the costs of extra observation, the salaries of contingent forces and other expenses incurred by the owner due to delays in completion of the work caused by the Contractor.

Liquidated damages shall be assessed in an amount per day as indicated below for each calendar day following the established Contract completion date that the project is not substantially completed. Such sum shall be deducted from the Contract by Contract Change Order prior to final payment. Such Change Order will not require approval of the Contractor.

B. Liquidated damages are established at the rate of \$\_\_\_\_\_ per calendar day.

#### 48. SIMULTANEOUS EXECUTION OF CONSTRUCTION CONTRACTS

A. In order to expedite the processing of construction contracts, bidders agree to the simultaneous execution of a copy of this document by all parties. After the execution of their copy of the agreement, the parties shall submit them to the State of Kansas, Division of Purchases, for assembly and may make a copy for their files if they wish. Upon receipt of all executed copies, and the submittal of the required bonds and insurance certificates, the Division of Purchases shall date and assemble the copies and it shall constitute a binding agreement as of the date of assembly. The assembled copies shall be retained in the Division of Purchases, and a fully-executed set of contracts shall be delivered to the contractor and state agency.

B. It is further agreed that if any party wishes to change any part of the contract, they shall notify the Division of Purchases prior to signature. The Division of Purchases shall review the request and if the changes are acceptable, a new contract shall be prepared and resubmitted to all parties for their signatures and processing as mentioned above.

#### 49. BUY AMERICAN ACT

The State covenants and agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

#### 50. LOBBYING

A. The Contractor/Vendor covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. The Interim Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of section 319 of Public Law 101-121 (31 U.S.C. § 1352) is incorporated by reference.

#### 51. ENVIRONMENTAL PROTECTION

A. The Contractor/Vendor agrees that its performance under this contract shall comply with: the requirements of Section 114 of the Clean Air Act (42 U.S.C. § 7414) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318), that relate generally

to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder; the Resources Conservation and Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA); the National Environmental Policy Act (NEPA); and any applicable Federal, Contractor/Vendor or Local environmental regulation.

B. The Contractor/Vendor shall insure that no facility used in its performance under this contract is listed on the Environmental Protection Agency (EPA) list of violating facilities pursuant to 40 CFR Part 15 without the concurrence of State. The Contractor/Vendor shall notify State of the receipt of any communication from EPA indicating that a facility to be or being used in its performance under this contract is under consideration for listing on the EPA list of violating facilities.

C. For the purposes of this section, State agrees that the Contractor/Vendor's obligations in Paragraphs A. and B. of this section above shall not apply to any armory, base, training site, or other facility or portion thereof, the operation and maintenance of which is funded under this contract, that is currently listed as a violating facility, on the effective date of this contract, pursuant to 40 CFR Part 15; nor, shall such listing be the basis for State's termination for cause of this contract or for State's disallowance of any cost otherwise allowable under this contract. The Contractor/Vendor and State agree to cooperate to remediate, as expeditiously as possible, for any facility the operation and maintenance of which is within the scope of this contract, the condition giving rise to the listing of any such facility as a violating facility according to applicable statutes, regulations, or other agreements subject to the availability of funds.

#### 52. DEBARMENT AND SUSPENSION

A. Contractor/Vendors shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension".

B. The Final Rule, Government-wide Debarment and Suspension (Nonprocurement), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 25) to implement the

provisions of Executive Order 12549, "Debarment and Suspension" is incorporated by reference and the Contractor/Vendor covenants and agrees to comply with all the provisions thereof, including any amendments to the Final Rule that may hereafter be issued.

#### 53. DRUG-FREE WORK PLACE

A. The Contractor/Vendor covenants and agrees that it will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. § 701 et seq.) and maintain a drug-free workplace.

B. The Final Rule, Government-Wide Requirements for Drug-Free Workplace (Grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28, Subpart f) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Contractor/Vendor covenants and agrees to comply with all the provisions thereof, including any amendments to the Final Rule that may hereafter be issued.

#### 54. STATE ENERGY CONSERVATION PLAN

This contract does incorporate by reference any State Energy Conservation plan in effect as of the date of this contract and adopts mandatory standards and policies contained therein as promulgated by the Research and Energy Analysis Division of the Kansas Corporation Commission.

#### 55. USE OF UNITED STATES FLAG VESSELS

A. To use privately-owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) of any equipment, materials, or commodities that are both (1) procured, contracted for, or otherwise obtained with funds made available by State under this contract, and (2) transported by ocean vessel, to the extent such vessels are available at fair and reasonable rates;

B. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading

for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A. above to both State and to the Division of National Cargo, Office of Market Development, U. S. Maritime Administration, Washington, D.C. 20590; and,

C. Subject to existing contracts, to insert the substance of the provisions of this section in all contracts issued pursuant to this contract, and to cause such provisions to be inserted in all subcontracts issued pursuant to this contract, where the contract or subcontract is for \$100,000 or more and where there is a possibility of ocean transportation of procured equipment or materials.

#### 56. AUDIT

The contracting officer or his representatives shall have the audit and inspection rights. The contracting officer or his representative shall have the right to examine books, records, documents and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times of the contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

The materials described above shall be made available at the office of the contractor, at all reasonable times, for inspection, audit or reproduction until the expiration of three (3) years from the date of final payment.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

(2) Records which relate to appeals of this contract or litigation or the settlement of claims arising out of the performance of this contract shall be made available until such appeals, litigation or claims have been disposed of.



## 1104- AGGREGATES FOR AGGREGATE BASE CONSTRUCTION

### SECTION 1104

#### AGGREGATES FOR AGGREGATE BASE CONSTRUCTION

##### 1104.1 DESCRIPTION

This specification covers aggregates for use in aggregate base construction.

##### 1104.2 REQUIREMENTS

###### a. Composition.

(1) Type AB-1 or AB-2 may be singularly or any combination of crushed stone, crushed or uncrushed gravel, sand, sand-gravel, or limestone gravel mixed with soil or other qualified binder material.

(2) Type AB-3 is at least 85% limestone or dolomite produced by mechanical crushing.

###### b. Quality<sup>1</sup>.

- Soundness<sup>2</sup>, minimum (KTMR-21) .....0.85
- Wear<sup>3</sup>, maximum (KTMR-25) .....50%
- Absorption, maximum (AB-1 only) (KT-6, Procedure I) .....4.0%
- Specific Gravity (dry), minimum (KT-6, Procedure I) .....2.20

<sup>1</sup>Crushed aggregates with less than 10% material retained on the No. 4 sieve (excluding mineral filler supplements) must be produced from a source complying with the official quality requirements of this Section prior to crushing.

<sup>2</sup>The above requirements for soundness do not apply for aggregates having less than 10% material retained on the No. 4 sieve.

<sup>3</sup>The above requirements for wear do not apply to aggregates having less than 10% material retained on the No. 8 sieve.

###### c. Product Control.

(1) Gradation and Plasticity. Provide a uniformly mixed final product that complies with TABLE 1104-1.

(2) Deleterious Substances. Provide aggregates that are free from weeds, sticks, grass, roots and other undesirable foreign matter.

d. Stockpiling. Stockpile and handle aggregates in such a manner to prevent detrimental degradation and segregation, the incorporation of appreciable amounts of foreign material, and the intermingling of stockpiled materials.

##### 1104.3 TEST METHODS

Test aggregates according to the applicable provisions of SECTION 1115.

TABLE 1104-1: GRADATION AND PLASTICITY OF AGGREGATES FOR AGGREGATE BASE CONSTRUCTION											
Type	% Retained-Square Mesh Sieves									P.I.	Liquid Limit (Max.)
	2"	1 1/2"	1"	3/4"	3/8"	No. 4	No. 8	No. 40	No. 200		
AB-1	0	0-10		5-40		35-75	54-85	78-95	90-98	0-6	25
AB-2*			0		1-35		25-50	60-75	78-90	1-6	25
AB-3**	0	0-5		5-30		35-60	45-70	60-84	80-92	2-8	30

\*The fraction passing the No. 200 sieve shall not exceed 2/3 of the fraction passing the No. 40 sieve.

\*\*The fraction passing the No. 200 sieve shall not exceed 3/4 of the fraction passing the No. 40 sieve.

##### 1104.4 PREQUALIFICATION

Prequalify aggregate sources according to subsection 1101.4.

## **1104- AGGREGATES FOR AGGREGATE BASE CONSTRUCTION**

### **1104.5 BASIS OF ACCEPTANCE**

Aggregates covered by this subsection are accepted based on the procedures described in subsection 1101.5.

## 1111 - AGGREGATES FOR SURFACING OR RESURFACING

### SECTION 1111 AGGREGATES

#### AGGREGATES FOR SURFACING OR RESURFACING

##### 1111.1 DESCRIPTION

This specification covers the type of aggregate used for surfacing or resurfacing operations as shown in the Contract Documents.

##### 1111.2 REQUIREMENTS

a. **Composition.** Provide one of the following types of aggregates for surfacing or resurfacing as shown in TABLE 1111-1.

b. **Quality<sup>1</sup>.**

- Soundness<sup>2</sup>, minimum (KTMR-21) ..... 0.85
- Wear<sup>3</sup>, maximum (KTMR-25) ..... 45%

<sup>1</sup>Crushed aggregates with less than 10% material retained on the No. 4 sieve (excluding mineral filler supplements) must be produced from a source complying with the official quality requirements of this Section prior to crushing.

<sup>2</sup>The above requirements for soundness do not apply for aggregates having less than 10% material retained on the No. 4 sieve.

<sup>3</sup>The above requirements for wear do not apply to aggregates having less than 10% material retained on the No. 8 sieve.

c. **Product Control.**

(1) **Size Requirements.** Provide aggregate that complies with TABLE 1111-1. Determine the fineness modulus in accordance with the procedures listed in Part V, Section 17.07.

TABLE 1111-1: GRADING REQUIREMENTS FOR AGGREGATES FOR SURFACING OR RESURFACING									
Type	Material	Percent retained-square mesh sieve (Gradings after removal of deleterious substances)							Fineness Modulus
		1 ½"	1"	¾"	3/8"	No. 8	No. 30	No. 200	
SA-1	Sand-gravel		0	0-5	0-20			**	4.00 min.*
SA-2	Sand-gravel	0	1-15					**	5.00 min.
SA-6	Crushed Stone	0	0-5	5-25	45-100		95-100	**	
SA-7	Crushed Stone	0		25-50		85-100		**	
SA-X	Crushed Stone		0	0-5	35-65		95-100	**	

\*For fineness modulus less than 4.00 but greater than 3.75, provide additional materials as a penalty at a rate of 1.5% for each 0.05 less than 4.00 fineness modulus. Use a maximum lot size of 500 cubic yards or tons to determine penalty. Average all tests within the lot to determine penalty.

(2) **Deleterious Substances.** Do not exceed the following percentages of deleterious substances by weight:

- Material passing No. 200 sieve (KT-2) ..... 3.0\*\*
- Clay lumps and friable particles (KT-7) ..... 2.0\*\*
- Sticks (wet) (KT-38) ..... 2.0

\*\*The total combination of clay lumps and friable particles and material passing the No. 200 sieve can be 7% provided the contractor furnishes an additional 1.5% material for each 1% that the total combination of the two is over the 5% limit

d. **Stockpiling.** Stockpile and handle aggregates in such a manner to prevent detrimental degradation and segregation, the incorporation of appreciable amounts of foreign material, and the intermingling of stockpiled materials.

##### 1111.3 TEST METHODS

Test aggregates according to the applicable provisions of SECTION 1111.

## **1111 - AGGREGATES FOR SURFACING OR RESURFACING**

### **1111.4 PREQUALIFICATION**

Prequalify aggregate sources according to subsection 1101.4.

### **1111.5 BASIS OF ACCEPTANCE**

Aggregates covered by this subsection are accepted based on the procedures described in subsection 1101.5.



**1112 - AGGREGATES FOR SURFACING OR SUBGRADE MODIFICATION  
FOR COUNTY SECONDARY ROADS**

**SECTION 1112**

**AGGREGATES FOR SURFACING OR SUBGRADE MODIFICATION  
FOR COUNTY SECONDARY ROADS**

**1112.1 DESCRIPTION**

This specification covers types of aggregates used for surfacing or subgrade modification for county secondary roads as shown in the Contract Documents.

**1112.2 REQUIREMENTS**

a. **Composition.** Provide one of the types of aggregate for surfacing or subgrade modification for secondary roads as shown in TABLE 1112-1 and 1112-2.

b. **Quality<sup>1</sup>.**

- Soundness<sup>2</sup>, minimum (KTMR-21) .....0.85
- Wear<sup>3</sup>, maximum (KTMR-25) .....55%

<sup>1</sup>Crushed aggregates with less than 10% material retained on the No. 4 sieve (excluding mineral filler supplements) must be produced from a source complying with the official quality requirements of this Section prior to crushing.

<sup>2</sup>The above requirements for soundness do not apply for aggregates having less than 10% material retained on the No. 4 sieve.

<sup>3</sup>The above requirements for wear do not apply to aggregates having less than 10% material retained on the No. 8 sieve.

c. **Product Control.**

(1) **Size Requirements.** Provide aggregate that complies with TABLE 1112-1. Determine the gradation factor in accordance with the procedures listed in Part V, Section 5.17.07.

TABLE 1112-1: GRADATION REQUIREMENTS										
Type	Material	Percent retained On standard square mesh sieves*								Gradation Factor
		2"	1 1/2"	1"	3/4"	3/8"	No. 4	No. 8	No. 30	
SS-3	Crushed Stone		0	0-15		45-85			90-100	
SS-5	Crushed Stone	0	0-5	0-30		45-90			90-100	
SS-7	Sand-gravel			0	0-5	0-20				4.00 - 5.00**
SS-8	Sand-gravel			0	0-5	0-30				3.75+
SS-9	Sand-gravel			0		0-20				3.50+
SS-10	Sand-gravel	0	0-5			0-30				3.25+
SS-14	Limestone gravel		0							

\*After removal of all deleterious substances

\*\*For grading factors less than 4.00 but greater than 3.75, provide additional materials as a penalty at a rate of 1.5% for each 0.05 less than 4.00 grading factors. Use a maximum lot size of 500 cubic yards or tons to determine penalty. Average all tests within the lot to determine penalty.

**1112 - AGGREGATES FOR SURFACING OR SUBGRADE MODIFICATION  
FOR COUNTY SECONDARY ROADS**

2. (2) Deleterious Substances. Do not exceed the values for each respective type as shown in TABLE 1112-

TABLE 1112-2: DELETERIOUS SUBSTANCES						
Type	Material	Passing No. 200 Mesh sieve		Sticks (wet)	Clay Lumps & Friable Particles	Combination <sup>3</sup>
		Note 1	Note 2			
SS-3	Crushed Stone	8.0	15.0	2.0	5.0	5.0
SS-5	Crushed Stone	8.0	15.0	2.0	5.0	5.0
SS-7	Sand-gravel	3.0	10.0	2.0	5.0	5.0
SS-8	Sand-gravel	8.0	15.0	2.0	4.0	
SS-9	Sand-gravel	10.0	15.0	2.0	3.0	
SS-10	Sand-gravel	10.0	15.0	2.0	3.0	
SS-14	Limestone gravel	7.0	30.0			

<sup>1</sup>Without penalty.

<sup>2</sup>Allowable wash penalty. The total combination of clay lumps and friable particles and material passing the No. 200 sieve can equal the value in this column (2) provided the contractor furnishes an additional 1.5% material for each 1% that the total combination of the two is over the sum of the two individual limits (1) + (3).

<sup>3</sup>Of any deleterious substances except material passing No. 200 (2).

**d. Stockpiling.**

Stockpile and handle aggregates in such a manner to prevent detrimental degradation and segregation, the incorporation of appreciable amounts of foreign material, and the intermingling of stockpiled materials.

**1112.3 TEST METHODS**

Test aggregates according to the applicable provisions of SECTION 1115.

**1112.4 PREQUALIFICATION**

Prequalify aggregate sources according to subsection 1101.4.

**1112.5 BASIS OF ACCEPTANCE**

Aggregates covered by this subsection are accepted based on the procedures described in subsection 1101.5.